

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: St. Jude Medical, Inc. File No. 01-MD-1396
Silzone Heart Valves (JRT/FLN)
Products Liability Litigation

Minneapolis, Minnesota
January 20, 2005
12:52 P.M.

BEFORE THE HONORABLE JOHN R. TUNHEIM
UNITED STATES DISTRICT COURT JUDGE

(STATUS CONFERENCE)

APPEARANCES

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1 (In open court.)

2 THE COURT: You may be seated, everyone. Good
3 afternoon. This is civil case number 01-1396, In re:
4 St. Jude Medical, Inc., Silzone Heart Valves Products
5 Liability.

6 Counsel, would you note your appearances today.

7 MR. JACOBSON: Joe Jacobson for the class.

8 MR. ANGSTREICH: Steven Angstreich for the class.

9 MR. CAPRETZ: James Capretz for the class.

10 MR. MURPHY: Pat Murphy, plaintiffs' state
11 liaison counsel.

12 MR. RUDD: Gordon Rudd.

13 MR. KOHN: Steven Kohn for St. Jude Medical.

14 MR. STANLEY: David Stanley for St. Jude Medical.

15 MS. PORTER: Liz Porter in-house for St. Jude
16 Medical.

17 MS. VAN STEENBURGH: Tracy Van Steenburgh for
18 St. Jude Medical.

19 THE COURT: Good afternoon to all of you. We
20 have an agenda here this afternoon I see. Mr. Capretz, are
21 you going to lead off?

22 MR. CAPRETZ: Yes, I am, Your Honor. I will say
23 that it is nice to see you and our cohorts again, but it's
24 not particularly nice to be here when it's sunny and 70 in
25 California.

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1 THE COURT: You had to mention that.

2 MR. CAPRETZ: I also will say, this has been
3 going on for several years, and we have had promotions and
4 partnerships and 40th birthdays, and we would like to
5 recognize Lou Jean for the great work, and I haven't spoken
6 with all my cohorts, but I am sure they all agree we're
7 disappointed to see her go, and we thank her for all her
8 time and efforts. We appreciated working with you.

9 MS. GLEASON: Thank you.

10 MS. VAN STEENBURGH: Your Honor, I was going to
11 do this later, but both sides are so appreciative of what
12 Lou Jean has done for us, and Gordon and I have had a lot
13 of fun talking to you on the phone that between the two of
14 us, we decided we would get you a little something in
15 appreciation. We know you like coffee, so Starbucks was in
16 order, it seemed to us.

17 MS. GLEASON: Thank you, I appreciate it.

18 THE COURT: That's very nice. Thank you,
19 everybody.

20 MR. CAPRETZ: Okay. Your Honor, we understand
21 you're on a tight schedule. I know you have a trial going

22 on, and we have all been told. We will wrap up whenever we
23 need to by two, and we plan on meeting with you per your
24 request for the end game committee. We should be able to
25 go through this agenda quite fast.

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1 The status of the Eighth Circuit appeal, all
2 briefs has been filed. We're now waiting to hear as to
3 when the arguments might be, and talking to Attorney
4 Jacobson, none of us seem who know a bit about the circuit,
5 there is just no way to predict when that might be, but
6 we're all standing by waiting for that next step.

7 THE COURT: So all the briefing has been done?

8 MR. CAPRETZ: Yes, Your Honor, that has been
9 required as of this time has been submitted.

10 THE COURT: Okay.

11 MR. CAPRETZ: The next item is the status of
12 discovery and agreement to extend discovery schedules. Due
13 to the circumstances, both sides have been discussing
14 changing the deadline for the completion of generic fact
15 discovery and case specific discovery and a deadline for
16 the generic experts.

17 We have a proposed pretrial order number 40 which
18 will extend, basically, pursuant to the Court's order, if
19 it so orders, the deadline for the generic fact discovery
20 until April of 2005 and the case specific fact discovery
21 through May 15th of 2005.

22 We also have and will be presenting a pretrial
23 order number 41 which concerns the generic expert
24 witnesses, and I think we have reached an agreement that we
25 may not have the form today because we had June 1st. In

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1 the hallway I think we agreed to May 15th or 45 days after
2 the close of the generic fact discovery, so the Court will
3 be presented with those two motions.

4 THE COURT: Very well.

5 MR. CAPRETZ: Just a matter of informing the
6 Court, there have been a couple of discovery disputes
7 involving some written interrogatories, number one. And
8 two, the deposition, during the deposition of
9 Mrs. Ellingsworth I think both of those items are going to
10 be presented to the special master for resolution.

11 THE COURT: Okay.

12 MR. CAPRETZ: St. Jude requested time to discuss
13 the dismissal of a case.

14 MR. STANLEY: Your Honor, as you are aware, we
15 filed a motion to dismiss the Jones case. The named
16 plaintiff died. There was no substitution of an additional
17 plaintiff. We then required time to file the motion to
18 dismiss on those grounds. It's been on the Court's
19 calendar I think twice.

20 It's not opposed, and we would just request that
21 the Court grant the motion and enter a dismissal of the

22 case.

23 THE COURT: Do you recall when that was filed,

24 Mr. Stanley?

25 MR. STANLEY: Yeah, I want to say it was filed

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1 back in October or so, and it was first on the Court's
2 calendar, I believe, for the November status conference by
3 telephone, and I think the last I had heard about this was
4 someone from the court was going to call the plaintiff's
5 counsel to see if they were going to oppose. I don't know
6 if that happened or not.

7 THE COURT: Okay.

8 MR. STANLEY: I don't know which one happened,
9 but that's where we are. Again, Your Honor, it's been
10 formally noticed twice with no opposition.

11 THE COURT: And do you know who the attorney is
12 for Ms. Jones?

13 MR. STANLEY: I do, Your Honor. It's Walter
14 Alvarez and James -- of Crown Point, Indiana, and James
15 Oats of Maryville, Indiana, are the two counsel in the
16 case.

17 THE COURT: We'll get on that right away.

18 MR. STANLEY: Thank you, Your Honor.

19 THE COURT: Mm-hmm.

20 MR. CAPRETZ: And, Your Honor, I would like to
21 say from the plaintiffs' steering committee perspective

22 that we ask that any such dismissals be without prejudice.
23 I know St. Jude probably wants it the other way, but I
24 think it's incumbent on us to try to protect the
25 plaintiffs, not knowing really what is going on here and

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1 it's a communication issue, so we ask that it be without
2 prejudice.

3 The next item is a matter of a request from
4 plaintiffs' counsel in the matter of Cox Daugherty versus
5 St. Jude Medical. This is a case pending out of Little
6 Rock, Arkansas, and the gentlemen involved in representing
7 the plaintiff have asked us the procedure for seeking a
8 remand.

9 We have discussed, the plaintiffs' steering
10 committee, have discussed with them the fact that that may
11 be premature, although they say they do not need the
12 generic experts, so they're willing to proceed on their own
13 with their own experts.

14 If a remand is not to be granted, and there is
15 nothing pending before the Court. We're just calling it to
16 the Court's attention. We have explained to counsel what
17 they need to do if they wish to do it, but we also
18 understand the Court has the power to ask or require, I
19 should say, St. Jude Medical to respond to plaintiffs'
20 request for individual case expert discovery.

21 That is within the powers of the Court, and I

22 think once again the appropriate procedure would be for
23 them to make that request. We did say that we would bring
24 this matter to the Court's attention at this status
25 conference.

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1 MR. STANLEY: Just briefly.

2 THE COURT: Mr. Stanley?

3 MR. STANLEY: I told Mr. Angstreich before the
4 conference that our position obviously is that if they want
5 to make a motion for early remand, then they need to make a
6 motion. We had a similar circumstance with the Linker case
7 where the Court invited them to make that kind of motion,
8 and we never saw it.

9 And our records, the latest medical records we
10 have of this particular plaintiff is that his cardiologist
11 says he's doing spectacular from a cardiology standpoint.
12 So in our mind, we don't see any medical basis for an early
13 remand, but if they want to make a motion, we can consider
14 it when there is a formal motion before the Court.

15 THE COURT: You're not sure, Mr. Capretz, whether
16 this motion is coming?

17 MR. CAPRETZ: No, I couldn't say. We did furnish
18 them with forms. I don't think they're familiar with
19 working within an MDL or complex litigation panel. We did
20 give them the forms if they wished to do a motion and use
21 that, but we know they're anxious to try to move the matter

22 forward, and we will advise the Court as instructed.

23 MR. ANGSTREICH: Your Honor, if I might add?

24 THE COURT: Sure.

25 MR. ANGSTREICH: I think that counsel was looking

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1 for us to get some advisory response from the Court as to
2 whether or not such a motion would be entertained and that
3 there would be any real chance for an early remand, absent
4 any extenuating circumstances requiring an early trial of
5 the case.

6 And if the Court were of the opinion that only
7 exceptional circumstances would be entertained, we would
8 pass that back to them and wouldn't -- would suggest that
9 they not take the Court's time in making such a motion.

10 THE COURT: Would it be your intent, Mr. Stanley,
11 to oppose the motion?

12 MR. STANLEY: Based upon, again, if the
13 exceptional circumstances are there, there would be a
14 medical necessity to have an early trial, then yes, we
15 would oppose the motion because based on the medical
16 information we have, there is no basis for a motion.

17 THE COURT: It's not needed?

18 MR. STANLEY: I don't know what other exceptional
19 circumstances there could be that would justify disrupting
20 the schedule that we've all agreed to.

21 THE COURT: I'm inclined to agree with that

22 position that if for some reason the individual involved,
23 his health is deteriorating, that might be a good reason.
24 That would constitute exceptional circumstances, but until
25 that occurs, I think it's a little premature to consider a

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1 remand right now.

2 MR. CAPRETZ: I would bring this on behalf of
3 counsel to the Court's attention. I do understand and
4 appreciate the Court's comments. However, I don't think
5 there is anything magical about waiting. Usually these for
6 remand, as I understand it, are a matter of completion of
7 the generic discovery.

8 THE COURT: Yes.

9 MR. CAPRETZ: And the use of generic experts.
10 They claim they don't need that. I don't know of any
11 prohibition from remanding it back unless the Court feels
12 it would lend disorder to the proceeding to make -- you may
13 want to think about that, or you could also, as I say, I
14 think it's also within the purview of the Court's power
15 to -- they wish to take the defendant's experts'
16 depositions, order that if requested.

17 THE COURT: Well, if they wish to make the
18 motion, I surely will consider it. I mean, I will hear
19 from any party who wishes to express an opinion. It's not
20 that I would not hear it, but I think at this stage, I
21 mean, we're getting closer to the stage where remands may

22 be in order, but I don't think we're quite there right now.

23 It would seem to me that something in the nature

24 of an approaching medical emergency might be the strongest

25 reason for a remand so the trial could go forward while

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1 someone was still able to participate in it.

2 This doesn't sound like this is the situation,
3 but if it becomes that kind of situation, they should make
4 a remand motion right away. Okay?

5 MR. CAPRETZ: Okay. Thank you, Your Honor. The
6 next item, Your Honor, is a report on the cases. I believe
7 you did receive two reports from counsel. One was the
8 normal update Silzone status report, and it indicated our
9 summary shows that there were in November of 2004, the last
10 one apparently prior to this date, there were 6 class
11 actions and 21 individual claims in the federal MDL for a
12 total of 27 with state cases totaling 25.

13 As of January of this report, there are 4 class
14 actions showing, 21 individual, for a total of 25, with the
15 state Ramsey County showing 28 pending actions. I suspect
16 we're going to talk about that in more detail in our end
17 game committee meeting.

18 Also a report Mr. Stanley didn't put on the
19 agenda, but Mr. Stanley did provide as required a report on
20 the escrow account, the MDL escrow account. The Court
21 should have that. Basically it is at zero. I think we

22 have used the funds that have been put in it, and we're
23 still waiting for more settlements hopefully from the
24 attorneys.

25 Okay. The other is a report on Canadian and

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1 Ramsey County litigation. The Ontario MDL, if you will, or
2 equivalent thereof, still pending a decision on whether or
3 not they're going to allow an appeal that has been
4 requested by St. Jude Medical. There has been no decision.
5 Mr. Angstreich has informed me today that the action --

6 THE COURT: Appeal on the class certification?

7 MR. CAPRETZ: There was class certification, yes.

8 THE COURT: But the appeal of the class
9 certification?

10 MR. CAPRETZ: Yes, you have to request
11 permission, and that has been briefed and argued some time
12 ago, but it's been extraordinary, from what I am told, they
13 are still waiting for the person responsible, the judge
14 responsible, to issue a ruling.

15 Is it Manitoba or Quebec?

16 MR. ANGSTREICH: Montreal.

17 MR. CAPRETZ: Quebec Province, there is also an
18 action, and in that action, the Court may recall -- I think
19 we did mention this -- that the Court ordered that notice
20 be out, and Mr. Angstreich has informed me that he has
21 information that the notice has been sent out in that

22 particular proceeding.

23 THE COURT: Okay.

24 MR. CAPRETZ: And that basically, barring anybody

25 having any special extra comment or issues, that's all we

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1 have.

2 MR. ANGSTREICH: Just to bring you up-to-date on
3 the EU case which is now back in Ramsey County, next Friday
4 we will be arguing the forum nonconvenience and comity
5 motions which we argued before Your Honor, and we will then
6 know whether that case will be proceeding.

7 THE COURT: Next Friday?

8 MR. ANGSTREICH: Next Friday, and of the 28
9 Ramsey County cases, there are seven in a group that we are
10 hopefully going to complete mediation on the last quarter
11 of this month. They're with three of the MDL cases, so
12 hopefully ten cases can get settled before the end of the
13 month.

14 THE COURT: Okay. Anything, Mr. Kohn or
15 Mr. Stanley?

16 MR. STANLEY: No, Your Honor.

17 THE COURT: Okay. How about Mr. Murphy, anything
18 you have?

19 MR. MURPHY: No, Your Honor. My apologies. As
20 to the last hearing I was actually in Minnesota, and it was
21 telephonic, and it was about the time Jennifer from my

22 office had her baby, so things were a little up in the air.

23 THE COURT: That's fine. No problem.

24 Mr. Jacobson, do you have anything?

25 MR. JACOBSON: No, Your Honor.

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1 THE COURT: Very well. We will get at the Jones
2 matter right away and get that taken care of one way or the
3 other, and do we have an idea for another status conference
4 here? Do we need one next month? We're sort of waiting on
5 the circuit for a lot of things here.

6 MR. ANGSTREICH: I would suggest, Your Honor,
7 that we schedule one tentatively for March, the first two
8 weeks of March, somewhere in that time frame.

9 MR. CAPRETZ: Right around spring, Your Honor.

10 MR. ANGSTREICH: Talking about June.

11 THE COURT: That would be June.

12 MR. ANGSTREICH: Unless there is some emergent
13 issue that arises, which I would not anticipate, Mr. Solum
14 has been able to get the discovery issues resolved. We
15 don't expect that we will be bringing those matters to Your
16 Honor so that two months should be sufficient.

17 MR. STANLEY: Can we do it more towards the end
18 of March?

19 MR. ANGSTREICH: Do you want it toward the end?

20 MR. STANLEY: Yeah.

21 MR. ANGSTREICH: That's fine.

22 MR. STANLEY: I'm in trial.
23 THE COURT: Let's look at a calendar here. End
24 of March, you say? When is your trial scheduled,
25 Mr. Stanley?

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1 MR. STANLEY: It starts March 7th and probably
2 runs two weeks, so that week of the 21st is probably okay.

3 THE COURT: What about the last week of March
4 which is wide open for me?

5 MR. ANGSTREICH: That's fine, Your Honor.

6 THE COURT: Tuesday the 29th or Wednesday the
7 30th?

8 MR. CAPRETZ: All would work.

9 MR. STANLEY: Either one is fine.

10 THE COURT: Why don't we just say Wednesday the
11 30th. We will tentatively plan on that, and as it gets
12 close, we will agree on the appropriate time given what
13 else is going on on that date. And if there is a need for
14 a conference before that, I'm sure you will let us know,
15 and we will set something up on a shorter term basis.
16 Okay.

17 MR. ANGSTREICH: Your Honor, are we going to do
18 that at 9:30 in the morning?

19 THE COURT: When would be most convenient?

20 MR. ANGSTREICH: Well, Your Honor, it depends I
21 guess on whether we're going to have a conference such as

22 this or we have anything really on the agenda.

23 THE COURT: Yeah. Let's wait and see.

24 MR. ANGSTREICH: Okay.

25 THE COURT: We'll note that the hearing will be

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1 held on that day, and then we will figure out as we get
2 closer what kind of time we need. Okay?

3 MR. ANGSTREICH: Okay.

4 THE COURT: Okay. Anything else for today.

5 Okay. Thank you very much. We will have -- we will be in
6 recess, and then we will reconvene in chambers for a
7 meeting of the end game committee. Thank you all.

8 MR. ANGSTREICH: Thank you.

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I, Kristine Mousseau, certify that the foregoing
is a correct transcript from the record of proceedings in
the above-entitled matter.

Certified by:
Kristine Mousseau, CRR-RPR

Dated: January 26, 2004

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